

Tuesday, August 5, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:28 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Thomas Y. Chung and Chan N. Chung, 395925

2000, \$185,814.00 Assessment

For Appellant:

Thomas Chung, Taxpayer
Thomas R. Lamons, Representative
Douglas Chong, CPA
Tae Joon Kim, Witness

For Franchise Tax Board:

William Gardner, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether appellant is entitled to a deduction for bad debt and/or worthless stock.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.1)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Electronic Data Systems Corporation (EDS), 361467

1997, \$585,000.00 Claim for Refund

1998, \$490,000.00 Claim for Refund

For Appellant:

Kathleen P. Dill, Representative
Jon A. Sperring, Representative
Kelly Nall, EDS Manager—Federal Tax Audits
Karen Smith, Tax Counsel
Benjamin F. Miller, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant's combined report must include a wholly owned subsidiary that conducts a non-insurance business within California and is not subject to California's gross premiums tax, but conducts an insurance business in Texas and is classified as an insurance company under Texas law.

If the combined report must include the aforementioned subsidiary, whether the calculation of the sales factor should include the premiums received by the subsidiary during the course of its Texas insurance activities.

Action: (Motion expunged on August 6, 2008.)

Ms. Steel introduced two interns of her office: Stephen Chang, who attends California State University, Fullerton; and, Jenny Lee, who attends Pepperdine University.

The Board recessed at 11:58 a.m. and reconvened at 1:28 p.m. with Ms. Yee, Dr. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

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Francelle Vercher, 417995

2005, \$3,146.00 Tax, \$786.50 Notice and Demand Penalty, \$786.50 Late Filing Penalty, \$125.00 Enforcement Fee

For Appellant:

Francelle Vercher, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the underlying tax assessment.
Whether appellant has shown reasonable cause for the abatement of penalties.
Whether appellant has shown that the filing enforcement fee was properly imposed.

Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SALES AND USE TAX APPEALS HEARINGS

Aromatic Research & Tech, LLC, 301405 (OH)

10-1-99 to 3-31-03, \$788,551.48 Tax

For Petitioner:

Graham Hoad, Representative

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is entitled to additional adjustments to the disallowed non-taxable and exempt sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Ralph A. Sandoval and Rafael G. Sandoval, 406895 (EA)

7-1-03 to 6-30-06, \$15,661.48 Tax

For Petitioner:

Graham Hoad, Representative

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Ibrahim Ibrahim and Sahar Ibrahim, 310288 (EH)

7-1-01 to 3-31-04, \$14,610.42 Tax, \$00.00 Penalty

For Petitioner:

Ibrahim Ibrahim, Taxpayer

For Department:

Mariflor Jimenez, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issues: Whether adjustments are warranted to the audited understatement of recorded taxable sales established by markup.

Whether the Department has accurately computed the difference between recorded and reported taxable sales.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Quick Pick Food Stores Liquor, Inc.*, 254339 (EA); *Tobacco Retailing USA, Inc.*, 139097 (AA); *Tal Rubin*, 360275 (AC); *Sunrise Collections, Inc.*, 282023 (AC); *Yael Rubin*, 360274 (AC); *K.S. Designs, Inc.*, 312861 (AA); and, *Donald R. Loya*, 358842 (AC).

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Western Dairy Construction, Inc., 358121 (KH)

1-1-04 to 12-31-05, \$00.00 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

Daniel Sekyun Roh, 342557 (AC)

1-1-01 to 12-31-03, \$21,752.76 Tax, \$2,175.30 Negligence Penalty, \$1,301.59 Double Negligence Penalty, \$1,695.13 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Dastigir G. Omar, 355261 (EH)

10-1-01 to 9-30-04, \$87,879.31 Tax, \$198.90 Penalty Overpayment

Action: Redetermine as recommended by the Appeals Division.

Quick Pick Food Stores Liquor, Inc., 254339 (EA)

10-1-99 to 10-31-03, \$1,756.16 Tax

Action: The Board took no action.

Tobacco Retailing USA, Inc., 139097 (AA)

1-1-98 to 9-30-00, \$12,937.09 Tax

Action: The Board took no action.

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Tal Rubin, 360275 (AC)

1-1-03 to 3-31-03, \$8,322.00 Tax, \$882.20 Penalty

Sunrise Collections, Inc., 282023 (AC)

7-1-00 to 6-30-03, \$17,914.70 Tax, \$2,344.09 Amnesty Interest Penalty

Yael Rubin, 360274 (AC)

1-1-03 to 3-31-03, \$00.00 Tax, \$00.00 Penalty

Action: The Board took no action.

K.S. Designs, Inc., 312861 (AA)

1-1-01 to 12-31-03, \$152,733.18 Tax, \$15,273.34 Negligence Penalty

Action: The Board took no action.

Donald R. Loya, 358842 (AC)

1-1-01 to 3-31-02, \$14,000.00 Claim for Refund

Action: The Board took no action.

Jose Agustin Fernandez, 400766 (AR)

1-1-03 to 12-31-05, \$17,411.82 Tax, \$7,924.75 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Vahagn Catering, Inc., 334789 (AP)

10-1-01 to 9-30-04, \$34,815.48 Tax, \$1,610.00 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

Saad Yelda Attisha, 443074 (ET)

January 31, 2008, \$151.80 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Elia Lewis Rezkalla and Rezk S. Rezk, 443058 (ET)

November 20, 2007, \$6,493.54 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Alison Buergel, 333132

2003, \$1,555.00 Tax, \$387.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Urve Pormeister, 382831

2005, \$3,773.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

A. G. Warner, 359094

2002, \$641.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Collin M. Wing, 352189

1999, \$3,199.00 Tax, \$639.80 Accuracy-Related Penalty

Action: Sustain the modified action of the Franchise Tax Board.

Sajid Batliwala and Rafia Batliwala, 329805

1999, \$2,260.00 Assessment

2000, \$40,910.00 Assessment

Action: Deny the petition for rehearing.

Carol Grant, 383405

2004, \$2,059.00 Tax, \$1,029.50 Penalties, \$1,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Charles A. Harris, 381473

2004, \$4,049.00 Tax, \$1,012.25 Late Filing Penalty, \$1,012.25 Notice and Demand Penalty,

\$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Gilbert L. Tauberg and Mina Tauberg, 360375

2003, \$7,530.00 Assessment

Action: Deny the petition for rehearing.

Judy Walther, 383468

2004, \$2,144.00 Tax, \$514.75 Late Filing Penalty, \$514.75 Failure to File Penalty, \$120.00

Filing Enforcement Fee, \$1,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Jon Maple, 398911

2002, \$10,877.00 Tax, \$2,719.25 Late Filing Penalty, \$2,719.25 Notice and Demand Penalty,

\$659.03 Post-Amnesty Penalty, \$125.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Shawn Mills, 395824

2004, \$2,357.00 Tax, \$589.25 Late Filing Penalty, \$589.25 Notice and Demand Penalty, \$120.00

Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Roger Romero, 397740

2002, \$5,485.00 Tax, \$1,371.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Ruth Vinson, 384140

2004, \$4,890.00 Tax, \$1,222.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$500.00 frivolous appeal penalty.

Ruth Vinson, 384249

2003, \$5,396.00 Tax, \$1,349.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Allan Walden, 383500.*

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Nasib Duggal, 403206

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Terrie Hatcher, 394502

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Andrew Moore, 423198

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Allan Walden, 383500

2004, \$347.50

2005, \$347.50

Action: The Board took no action.

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SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 *Beckman Coulter, Inc., 443861 (EA)*; in the Board made the following orders:

Dearborn Financial Institute, Inc., 379941 (OH)

7-1-02 to 6-30-05, \$447,726.83

Action: Approve the redetermination as recommended by staff.

Mountain States Steel, Inc., 390199 (OH)

5-1-03 to 12-31-05, \$373,847.42

Action: Approve the redetermination as recommended by staff.

Beckman Coulter, Inc., 443861 (EA)

10-1-00 to 12-31-03, \$105,930.16

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Hyundai Motor Finance Company, 396356 (EA)

4-1-04 to 12-31-06, \$93,212.23

Action: Approve the denial of claim for refund as recommended by staff.

John Arthur Hays, 310921 (AR)

4-1-02 to 9-30-04, \$86,798.32

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

(Motion expunged August 7, 2008.)

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Tesoro Refining and Marketing Company, 445176 (MT)*; the Board made the following orders:

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Tesoro Refining and Marketing Company, 445176 (MT)

10-1-07 to 10-31-07, \$347,991.35

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Tesoro Refining and Marketing Company, 445177 (MT)

10-1-07 to 10-31-07, \$757,118.00

Action: Approve the relief of penalty as recommended by staff.

Omnipoint Communications, Inc., 448066 (ET)

6-1-07 to 6-30-07, \$68,694.74

Action: Approve the relief of penalty as recommended by staff.

Asher Shaitrit, 438143 (ET)

5-17-99 to 5-31-01, \$164,579.82

Action: Approve the denial of claim for refund as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105 in *Conocophillips Company, 388730 (MT)*; Ms. Mandel not participating in accordance with Government Code section 7.9 in *Ohio National Life Assurance Corp., 442016 (ET)*; the Board made the following orders:

Conocophillips Company, 388730 (MT)

5-1-04 to 12-31-05, \$302,358.35

Action: Approve the refund as recommended by staff. Ms. Steel not participating in accordance with Government Code section 87105.

Ohio National Life Assurance Corp., 442016 (ET)

1-1-06 to 12-31-06, \$207,539.13

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 5, 2008

Thomas Y. Chung and Chan N. Chung, 395925

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

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Francelle Vercher, 417995

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Victor Roy, 395839

2004, \$848.00 Tax, \$212.00 Notice and Demand Penalty, \$212.00 Late Filing Penalty, \$120.00 Enforcement Fee

For Appellant:

No Appearance

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether appellant has demonstrated error in the underlying tax assessment.
Whether appellant has shown reasonable cause for the abatement of penalties.
Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD AUGUST 5, 2008

Aromatic Research & Tech, LLC, 301405 (OH)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ralph A. Sandoval and Rafael G. Sandoval, 406895 (EA)

Final Action: Upon motion of Ms. Yee, seconded by Dr. Chu and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 3:04 p.m.

The foregoing minutes are adopted by the Board on September 17, 2008.

Note: The following matters were removed from the calendar prior to the meeting: Ana M. Moore and Mitchell Moore, 281619; Elizabeth Dunham, 334589; Helmut D. Mees and Rebecca Mees, 405246; Oscar E. Martinez, 402210; and, Mark Emad Towfiq and Carol K. Nakahara, 396384.